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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/837,234      | 04/18/2001  | David Klug           | 88265-4026          | 1401             |

28765 7590 10/31/2002

WINSTON & STRAWN  
PATENT DEPARTMENT  
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WASHINGTON, DC 20005-3502

EXAMINER

TRAN LIEN, THUY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1761

DATE MAILED: 10/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MA-15

## Office Action Summary

Application No.

Applicant(s)

09/837,234

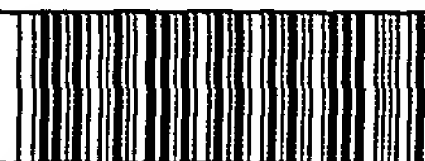
Klug et al

Examiner

Lien Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) ☒ Responsive to communication(s) filed on Aug 19, 2002

2a) ☐ This action is **FINAL**.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1 and 3-23 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) ☐ Notice of Informal Patent Application (PTO-152)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 14

6) ☐ Other:

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1. Claims 22-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The process in claim 23 is not supported by the original disclosure. There is no disclosure in the original specification of a process of molding a food product; the phrase "molding a food product" is not in the specification or the original claims. There is no disclosure in the specification that "a portion of the mass flows to conform to the shape of the sugar wafer". There is no disclosure of "filling in a second desired shape that corresponds to the desired shape of the sugar wafer and which is sufficiently solid to retain the second desired shape under ambient temperature". The limitation of claim 22 is not found in the specification.

2. Claims 1,3-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all relevant claims, the use of the terms "semi-liquid" and "semi-solid" is indefinite because it is not known what would be considered as semi-liquid and semi-solid. The specification does not define the terms.

3. Claims 1,3-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti et al (WO 00/13512).

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Conti et al disclose sugar wafers. The wafers may have a variety of shapes and sizes e.g. they may be flat sheets, cup, cone-shaped, or tubular. They may be used in a variety of confectionery products together with confectionery materials such as chocolates or other fatty material such as fat-based cream. A moisture barrier may be used between the surface of the sugar wafer and the other confectionery material; the barrier is preferably chocolate or chocolate substitute. The confectionery material preferably has a low water activity of below .3. Example 1 discloses the wafer tube is filled with a fat-based cream containing yoghurt. The wafer product may be enrobed with another suitable confectionery material such as plain, white or milk chocolate or with chocolate substitute. (See pages 4-5)

Conti et al do not disclose the size, the step of allowing the confectionery to harden, the inclusion of edible inclusions.

Conti et al disclose confectionery materials such as chocolates or other fatty material such as fat-based cream are used to fill the sugar wafer. Chocolate is the same confectionery material used in the claimed product and process, thus, it is obvious the confectionery material has the same characteristic as claimed. It is unclear what applicant intends to exclude or include with the language "semi-liquid" and "semi-solid". The confectionery material can be a fat-based cream which can be interpreted to be semi-liquid or semi-solid because it is not a total solid mass. As to allowing the confectionery material to harden, it would have been obvious to do depending on the taste and texture wanted. For example, if one desires the taste of a solid mass, it would have been obvious to allow the confectionery material to harden or if one wants the taste of a liquid

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confectionery material, it would have been obvious to do the opposite. It would have been obvious to make the product in any size because Conti et al teach the sugar wafers may have a variety of sizes. It would also have been obvious to add edible inclusions to give extra taste and flavor. Since the fat-based cream is not a totally solid mass, it will flow and conform to the shape of the sugar wafer when the wafer is filled with the fat-based cream. It would also have been obvious to make the confectionery material to have a dome shape to give the look of an ice cream to enhance the novelty of the product since Conti et al disclose the wafer may have a cone-shape and cone shape wafer is commonly associated with ice cream.

4. Applicant's arguments with respect to claims 1,3-23 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 30, 2002

  
LIEN TRAN  
PRIMARY EXAMINER  
